

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARTHUR TORLUCCI,
Petitioner,
vs.
M.S. EVANS, Warden,
Respondent.

Case No. CV 08-5646-GHK (RNB)

ORDER RE SUMMARY DISMISSAL
OF ACTION

Petitioner, a California state prisoner currently incarcerated at Salinas Valley State Prison in Soledad (“SVSP”), purported to file a Petition for Writ of Habeas Corpus by a Person in State Custody herein on August 27, 2008, along with a voluminous set of attached documents.

The allegations of the Petition are not entirely intelligible. However, as best the Court can glean from petitioner’s allegations, his claims are not directed to the legality or duration of petitioner’s current confinement,¹ but rather are directed to

¹ The Court notes that the legality of petitioner’s confinement was the subject of a separate habeas petition filed by petitioner on November 18, 2004 in Case No. CV 04-9878-GHK (RNB). The Court’s dismissal of that action for being time barred under 28 U.S.C. § 2244(d) is currently the subject of a Ninth Circuit

(continued...)

1 conditions of confinement allegedly being experienced by petitioner while
2 incarcerated at SVSP.

3 Claims directed to the conditions of petitioner's confinement may not properly
4 be asserted in a habeas petition, or as part of a habeas petition. See 28 U.S.C. §
5 2254(a); see also Preiser v. Rodriguez, 411 U.S. 475, 498-500, 93 S. Ct. 1827, 36 L.
6 Ed. 2d 439 (1973). Rather, such claims must be asserted in a separate civil rights
7 action. The Court does have discretion to construe petitioner's habeas petition as a
8 civil rights complaint. See Wilwording v. Swenson, 404 U.S. 249, 251, 92 S. Ct. 407,
9 30 L. Ed. 2d 418 (1971); Hansen v. May, 502 F.2d 728, 729 (9th Cir. 1974). In this
10 instance, however, the Court chooses not to exercise such discretion for the following
11 reasons.

12 First, petitioner's claims are not even intelligible. Second, petitioner does not
13 name in the Petition the correctional officials who allegedly violated his civil rights.
14 Thus, the identity of the defendants is unknown. Third, venue over petitioner's
15 claims directed to conditions of his confinement allegedly being experienced at SVSP
16 does not even lie in this District. Rather, since SVSP is located in Monterey County,
17 any such claims must be brought in the Northern District of California. See 28 U.S.C.
18 §§ 84(a), 1391(b).

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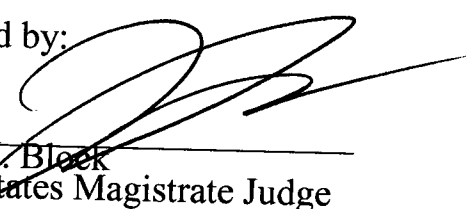
27 ¹(...continued)
28 appeal.

1 Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United
2 States District Courts, IT THEREFORE IS ORDERED that this action be summarily
3 dismissed without prejudice.

4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: 9/21/08

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10 GEORGE H. KING
11 UNITED STATES DISTRICT JUDGE

12 Presented by: 

13 Robert N. Block
14 United States Magistrate Judge
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